



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 09 2007

REPLY TO THE ATTENTION OF: WN-16J

Gary Powdrill, P.E.
Chair
Indiana Water Pollution Control Board
6 Forest Court
Greenfield, Indiana 46140

Dear Mr. Powdrill:

This is in response to your June 11, 2007 letter expressing concerns regarding changes in compliance dates for certain Concentrated Animal Feeding Operations (CAFO) to seek National Pollutant Discharge Elimination System (NPDES) permit coverage, and by which permitted CAFOs are required to develop and implement Nutrient Management Plans (NMP). You also urge the United States Environmental Protection Agency (U.S. EPA) to complete revisions to the Federal CAFO rules as soon as possible. We understand your concerns in this matter, and share your interest in promulgation of clear, concise and fair regulations that are protective of water quality. On July 18, 2007 U.S. EPA finalized revisions to the date change rule; that rule was published in the Federal Register on July 24, 2007 prior to the previous July 31, 2007 deadline (72 FR 40245). The Agency also currently intends to finalize revisions to the CAFO rule in response to the Second Circuit Court of Appeals decision in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2nd Cir. 2005) (hereinafter *Waterkeeper*) by the end of 2007.

As you know, *Waterkeeper* vacated the requirement that all CAFOs apply for NPDES permit coverage unless a CAFO demonstrates no potential to discharge. The Court also vacated the rule for failing to require incorporation of the terms of CAFOs' NMPs into their permits and for failing to prescribe public review and comment and permitting authority approval of the terms of the NMPs. Other provisions were remanded for further clarification and analysis.

On June 30, 2006 U.S. EPA published a proposed rule in response to the *Waterkeeper* decision which would revise several aspects of the Agency's regulations governing discharges from CAFOs. That proposal reflected the dates for compliance as revised on February 10, 2006 i.e., July 31, 2007 for permit application by newly defined CAFOs and NMP development and implementation by all permitted CAFOs. On May 10, 2007 U.S. EPA proposed to further extend these dates to February 27, 2009, because it would not complete a final rule revising the 2003 CAFO rule before the July 31, 2007 deadlines. These extensions were finalized on July 24, 2007. As indicated in the proposal to extend the deadlines, the extensions were needed because the amount of time needed to revise

2007 AUG 17 P 2:24
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the rule in response to the *Waterkeeper* decision has been greater than U.S. EPA anticipated at the time it promulgated the 2006 date rule.

Please note that the date change rule is limited in scope, and does not affect all CAFOs. U.S. EPA has extended the date by which operations defined as CAFOs as of April 14, 2003 that were not defined as CAFOs prior to that date, must seek NPDES permit coverage, from July 31, 2007 to February 27, 2009. The Agency has also amended the date by which operations that became defined as CAFOs after April 14, 2003 or that will become CAFOs due to operational changes that would not have made them a CAFO prior to April 14, 2003 and that are not new sources, must seek NPDES permit coverage, from July 31, 2007 to February 27, 2009.

The final rule does not affect the applicable time for seeking permit coverage for newly constructed CAFOs not subject to new source performance standards (NSPS) or for new source CAFOs subject to NSPS that discharge or propose to discharge, even those in categories that were added to the definition of a CAFO in the 2003 CAFO rule. These CAFOs that discharge or propose to discharge are required by 40 CFR 122.21(a) and 123.23(g)(3)(i) and (g)(4) to seek NPDES permit coverage at least 180 days prior to the time that they commence operating. These provisions were also unaffected by the 2006 date rule.

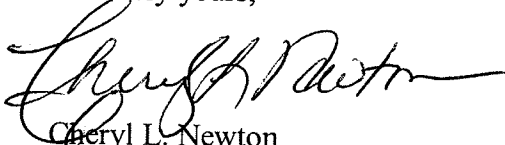
The final date change rule does not supersede State requirements. States may choose to require CAFOs to obtain NPDES permits in advance of the dates set in the federal NPDES regulations. Further, CAFOs that are already permitted, e.g., CAFOs that existed prior to the effective date of the 2003 CAFO rule and have been required to seek NPDES permit coverage even before U.S. EPA issued the 2003 CAFO rule, continue to be required to maintain permit coverage pursuant to section 122.23(h).

Similarly, the extension of the deadline by which permitted CAFOs are required to develop and implement NMPs, from July 31, 2007 to February 27, 2009 does not supersede State requirements, nor does it affect CAFOs operating under existing permits, so long as those permits remain in effect. If their existing permits require development and implementation of an NMP, currently permitted CAFOs must develop and implement their NMPs in accordance with the terms of their current permit. This rule also does not affect the applicable land application limitations and requirements for all CAFOs subject to the new source performance standards under 40 CFR 412.35 and 40 CFR 412.46. Upon permit coverage, new sources must meet all relevant land application requirements.

We share your interest in finalizing the revisions to the CAFO rules as expeditiously as possible. In doing so, U.S. EPA is committed to developing a final rule that is workable for States such as Indiana and producers, and that facilitates implementation of the Clean Water Act and protects water quality.

We look forward to continuing to work with Indiana to implement these important regulations. Please contact Matt Gluckman (312/886-6089) if you have any further questions regarding this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Cheryl L. Newton".

Cheryl L. Newton
Acting Director, Water Division

cc: Dennis Lasiter, IDEM
Bruce Palin, IDEM
Bruno Piggott, IDEM